

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King	Team: Team # 8	CCRB Case #: 200403350	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/13/2004 3:00 PM	Location of Incident: F/O 5124 Beach Channel Drive	Precinct: 101	18 Mo. SOL 10/13/2005	EO SOL 10/13/2005	
Date/Time CV Reported Tue, 04/13/2004 5:44 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/13/2004 5:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Cappolla	27141	929824	101 PCT
2. LT Gary Messina	00000	874530	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Gary Messina	Abuse: Lt. Gary Messina forcibly stopped § 87(2)(b) [REDACTED]	
B.LT Gary Messina	Force: Lt. Gary Messina used physical force against § 87(2)(b) [REDACTED]	
C.POM Thomas Cappolla	Force: PO Thomas Cappolla used physical force against § 87(2)(b) [REDACTED]	
D.LT Gary Messina	Force: Lt. Gary Messina used a chokehold against § 87(2)(b) [REDACTED]	

Synopsis

The complainant in this case – § 87(2)(b) – filed the complaint with the CCRB on behalf of her son § 87(2)(b) on April 13, 2004 via telephone. That same day, Lt. Gary Messina and PO Thomas Cappolla of the 101st Precinct stopped § 87(2)(b) for riding his bicycle on the sidewalk in the vicinity of 51-24 Beach Channel Drive in Queens. § 87(2)(g)

§ 87(2)(b) The officers subsequently arrested § 87(2)(b) after learning that he had an outstanding warrant for escape. § 87(2)(b) resisted the arrest and the officers used physical force in order to subdue § 87(2)(b) and PO Cappolla sustained minor injuries during the struggle. § 87(2)(g)

§ 87(2)(b) Finally, § 87(2)(b) alleged that Lt. Messina used a chokehold during the struggle. § 87(2)(g)

§ 87(2)(b) Regarding the arrest, § 87(2)(b) failed to appear in court for the criminal case and a new warrant has been issued for his arrest.

Summary of Complaint

Medical Records Statement

§ 87(2)(b) a 6', 160-pound, § 87(2)(b) old Black male with braided, black hair, provided a statement to responding EMTs on April 13, 2004 (Enclosure 5), the date of incident. § 87(2)(b)'s chief complaint was, "I was beat up." He claimed that he was pushed to the ground while being handcuffed and that he sustained injuries. He made no additional allegations of force.

§ 87(2)(b) was treated at § 87(2)(b) later that day (Enclosure 5a-5b). § 87(2)(b) claimed that he was pinned and sustained abrasions to his face during the arrest. He made no additional claims of force.

CCRB statement

§ 87(2)(b) was interviewed in his mother's home on June 14, 2004 (Enclosure 5c-5e). On April 13, 2004, two White male officers from the 101st Precinct arrested § 87(2)(b). At approximately 3 PM in front of 5124 Beach Channel Drive, § 87(2)(b) admitted to "being in the wrong," stating that he was riding in the street with another person on the handlebars – his friend § 87(2)(b) whom he has known for several summers. A marked RMP pulled in front of § 87(2)(b) causing him to go onto the sidewalk where he stopped.

§ 87(2)(b) described one of the officers as being a tall, 250 pound White male with light colored hair; this officer was in the car talking to § 87(2)(b) and was the first to grab § 87(2)(b) (hereafter, PO1). The other was a short White male with dark hair whose first name started with a "C" and § 87(2)(b) believed might have been, "Capollo" (hereafter, PO2). PO1 told § 87(2)(b) that he was going to issue him a summons for having another person sitting on the handlebars. The two uniformed officers exited their vehicle and approached him, asking him for his name and identification. § 87(2)(b) told them his date of birth and name. The officers checked their computer, which indicated that he had an outstanding warrant. § 87(2)(b) objected to this, stating that he had already been locked up for the warrant and had spent nine days in a juvenile detention center.

The officers stated again that he had a warrant and grabbed him. § 87(2)(b) grabbed a nearby gate with his left hand but the officers grabbed him on his chest and § 87(2)(b) let go of the gate. § 87(2)(b) denied trying to run from the officers. The officers forced § 87(2)(b) to the ground onto his chest. One of his arms was underneath his body. One of the officers was on § 87(2)(b)'s back. One of the officers lifted § 87(2)(b)'s leg up, causing his sneaker to come off. The officer then kicked § 87(2)(b) on his leg, specifically the inner thigh close to his genitals. The officer then kicked § 87(2)(b) a second time on the leg, though upon further questioning, § 87(2)(b) indicated that he was only kicked once. § 87(2)(b) did not know which officer did this. After this, PO2 grabbed § 87(2)(b)'s left hand and put a handcuff on it while holding the fence with his other hand. The officers could not get § 87(2)(b)'s other arm out from under his body, mainly because PO1 was on top of him. PO1 "banged" § 87(2)(b)'s head on the ground and § 87(2)(b) eventually reached his free hand up to his face to hold his face from hitting from the floor. § 87(2)(b) admitted that he was trying to get the officer off of him by trying to get up. PO1 grabbed § 87(2)(b) by his neck, specifically his Adam's apple and squeezed it real tight with his fingers. § 87(2)(b) could not breathe and was trying to scream but he was

hoarse. There were other people around, telling the officers to get off of him. § 87(2)(b) does not know how long he was held in this way.

§ 87(2)(b) let go of his hand and the officers handcuffed it. The officers then got § 87(2)(b) up and handcuffed his other hand. A marked van responded to the location and § 87(2)(b) was placed inside of it along with one of his sneakers, which had fallen off during the arrest. A female officer was inside of the van who told § 87(2)(b) that he was not bleeding after he asked. § 87(2)(b) was transported to the station house, where he took his sneakers and pants off. § 87(2)(b) explained that it had been raining and that his clothing was wet; he did not allege that he was strip-searched. § 87(2)(b) was placed in the holding cell and did not feel any pain from this incident, though he was taken to St. § 87(2)(b) for a cut to his face.

Results of Investigation

NYPD Records

On § 87(2)(b)'s arrest report (Enclosure 10s-10t), PO Roosevelt Green was listed as the arresting officer. PO Green charged § 87(2)(b) with assault in the second degree, violation "GCI" A misdemeanor, and resisting arrest. The arrest narrative stated, "at time and place of occurrence, defendant did assault PO by kicking him in the head, causing a laceration and contusion to PO's head. Defendant did resist arrest by flailing his arms. Defendant was observed operating a bicycle on the sidewalk. Defendant also has an active warrant. OCA #§ 87(2)(b). The bicycle was vouchered. Physical force was noted as being used in order to "overcome assault." PO Green is a male Black officer who was not in uniform.

UF-61 complaint report § 87(2)(b) (Enclosure 10q-10r) reiterated the above.

PO Green had the following memo book entries (Enclosure 7g-7h): 1504 – assigned arrest by Lt. Messina, assault PO Cappolla, defendant § 87(2)(b) 1015 Bay 25th Street, 16 years old, mother works for housing, lives in 51-24 Beach Channel Drive, vouchered photo § 87(2)(b) bike § 87(2)(b) arrest # § 87(2)(b).

An assault report (Enclosure 10u) was prepared on behalf of PO Thomas Cappolla of the 101st Precinct. It indicated that in the vicinity of 51-32 Beach Channel Drive, PO Cappolla was on-duty and sustained an injury when "attempting to handcuff suspect wanted for escape. Defendant did refuse to be cuffed and did swing and kick at officer." The report indicated that PO Cappolla was hospitalized.

A line of duty sheet (Enclosure 7) indicated that § 87(2)(b) "kicked PO Cappolla in the head causing laceration and contusion to right temple." Lt. Messina provided a witness statement (Enclosure 7a) that reiterated all of the above.

The second tour roll call (Enclosure 10-10o) indicated that PO Green was assigned as the telephone switchboard operator. PO Cappolla was not listed on the second tour roll call; he was listed on the third tour roll call as assigned to SNEU. PO Fagiolo was listed as the other SNEU officer that day.

Intake statement from witness/Canvass

§ 87(2)(b) the individual who was riding on the handlebars of the bicycle, provided a brief telephone statement when § 87(2)(b)'s mother filed the complaint on April 13, 2004 (Enclosure 4-4a).

§ 87(2)(g) § 87(2)(b) indicated that § 87(2)(b) attempted to run away after the officers told him he had an outstanding warrant. § 87(2)(b) made no allegation that the officers "choked" § 87(2)(b). He only claimed that the officers banged § 87(2)(b)'s head against the ground several times.

After interviewing § 87(2)(b) on June 14, 2004, a canvass was conducted to locate possible witnesses. § 87(2)(b)'s mother claimed that a woman named § 87(2)(b) who lived in § 87(2)(b) § 87(2)(b) witnessed the incident, though nobody was home at the time of the visit. A business card was left. A canvass was also conducted of the building in which § 87(2)(b) with negative results. § 87(2)(b) did not know § 87(2)(b)'s apartment and there was no listing with his last name. No witnesses could be located.

Officer Statements – PO Cappolla and Lt. Messina

PO Thomas Cappolla, a 5'9" 175-pound White male with brown hair, had the following memo book entries (Enclosure 6-6a): 1455 – observed defendant riding bike on sidewalk; when identified, the defendant had an open warrant for escape; while attempting to handcuff, the defendant was not compliant, punched and kicked, suffered a cut on right temple which was bleeding and swollen; 1504 – one under in front of Beach Channel Drive; 1520 – EMS to station house for treatment. PO Cappolla's next entry was for 4/14, which indicated that he went line of duty for the next four duties. He did not resume duty until Tuesday, April 20, 2004. Lt. Gary Messina, a 5'10" 215-pound, § 87(2)(b) old White male with brown hair,

had the following memo book entries (Enclosure 7b-7d): 1505 – stopped two male Blacks riding on one bicycle on sidewalk; operator of bicycle popped warrant. When attempted to handcuff, defendant did resist. 1530 – 10-62 A (administrative) at station house. 1655 – End of Tour.

PO Cappolla was treated for an abrasion to the right side of his temple at § 87(2)(b) on § 87(2)(b) and he provided a statement to the medical personnel (Enclosure 6b-6c). PO Cappolla stated to the responding physician that he was “kicked in the face,” specifically the right side of his face while attempting to restrain a perpetrator.

PO Cappolla of the 101st Precinct was interviewed at the CCRB on July 22, 2004 (Enclosure 6d-6f). Lt. Messina was interviewed at the CCRB on August 10, 2004 (Enclosure 7e-7f). § 87(2)(g)

According to the officers, they were on patrol when they observed a Black male riding a bicycle in the street and onto the sidewalk with another younger, Black male riding on the handlebars. Because the individual was riding the bicycle on the sidewalk, the officers pulled over to speak to him. According to Lt. Messina, he asked the male for his name, but the male tried to ride away. Lt. Messina reached out to grab a hold of the male. PO Cappolla exited the vehicle and approached the two males. Neither officer could recall if the male provided his identification or if he merely stated his name and date of birth, though both agreed that the information was obtained a warrant check was conducted, which found that the male was wanted on a warrant for escaping from a juvenile detention facility. The two officers disagreed as to who ran the warrant check. Each officer claimed to conduct the warrant check while the other stood with the male.

Once it was confirmed that the male had an outstanding warrant, the officers proceeded to place him under arrest. Lt. Messina claimed that he asked the male to turn around, which the male did. PO Cappolla took out his handcuffs in order to handcuff the male. Both officers stated that the male brought his arms inward to his chest. According to Lt. Messina, he attempted to pull the male’s arms back while PO Cappolla stood to the right of him. Lt. Messina believed that he was able to handcuff one hand during the initial struggle, as the male refused to allow his hands to be handcuffed by moving his arms. PO Cappolla, on the other hand, stated that the two officers together tried to pull his arms apart in order to handcuff the defendant; PO Cappolla also claimed that he stood to the left of the male and that the lieutenant stood on the right hand side of the male. PO Cappolla stood to the left of the male and the lieutenant was on the male’s right. They tried to pull his arms apart, but he would move his arms and move his elbows back in an effort to thwart the officers.

After about 10 seconds, the defendant started to run from the officers, breaking free of the officers’ grasp. PO Cappolla lunged out and grabbed the defendant’s ankle. As he did so, he lost his handcuffs and his radio, which was in his back pocket. According to Lt. Messina, he grabbed the male by his jacket but lost his grip. The lieutenant then grabbed the male by his arms. Lt. Messina claimed that at this point in time, the male kicked PO Cappolla, who was standing, in the face. PO Cappolla, on the other hand, claimed that all three of the individuals fell to the ground, particularly after the lieutenant grabbed the upper part of the male’s body. The lieutenant admitted that he wrapped his arms around the upper body of the male and “threw him to the ground” in an effort to prevent him from running, landing on top of the male in the process. Lt. Messina believed that the male sustained an abrasion to his cheek as a result of this. The male resisted by moving his body around and at one point was able to rise up on his arms and knees, but the lieutenant pushed him back down. The male moved his elbows around, striking the lieutenant in the chest though he sustained no injury from this.

Both officers agree that PO Cappolla was attempting to hold down the male’s legs at this time and that at one point, PO Cappolla requested back-up. Lt. Messina did not know when this occurred, though PO Cappolla stated that he did so during the struggle by using the lieutenant’s radio. PO Cappolla was situated at the lower portion of the defendant’s body and the lieutenant’s waist was near PO Cappolla’s head. He was thus able to press the radio and request for help. After doing this, the male continued struggling to break free of the officers’ grasp by kicking his legs. One of the kicks struck PO Cappolla on the right temple area, causing a laceration. PO Cappolla was trying to hold the male by his ankle, but he could not recall which one. He stated that at one point, he was holding both of the ankles, though the male kept kicking. Lt. Messina kept his body weight on the male in an effort to keep him from moving. Lt. Messina denied ever grabbing the male by his neck or Adam’s apple and he denied that he ever put his arm around the male’s neck. The two officers held the male until back-up arrived. PO Cappolla was not sure if the male was handcuffed before back-up responded, though Lt. Messina indicated that the responding officers (whom he could not identify other than Sgt. O’Brien) assisted in finally getting the male handcuffed. PO Cappolla denied that he handcuffed the male, stating that he had lost his handcuffs at the initial point of

contact, which was approximately 10-15 feet from where the struggle took them. Both of the officers denied ever kicking the male or lifting up his leg to kick him. PO Cappolla confirmed that there was a fence nearby, but he denied that the fence ever came into play.

PO Cappolla was bleeding at the end of the struggle and he was placed in a van that responded, which took him back to the station house. Lt. Messina drove to the station house by himself. PO Cappolla confirmed that the male's sneaker fell off during the incident, but he did not know when this happened or what caused it.

At the station house, EMS responded to treat PO Cappolla as well as the defendant. However, one of the supervisors, Lt. Bologna, told PO Cappolla to go to § 87(2)(b) for treatment and reassigned the arrest to PO Roosevelt Green. EMS treated the defendant. Lt. Messina verified the warrant and the male admitted that he was the individual wanted for the warrant. The officers had never seen the male prior to this incident. Both of them indicated that the male was wanted for another warrant at this time.

Medical Records

§ 87(2)(b)'s medical records (Enclosure 8-8f) indicated that he was diagnosed as having abrasions on the right side of his face. X-rays revealed no fractures. He was discharged and prescribed to take Bacitracin and Ibuprofen, an over-the-counter pain medication.

PO Cappolla's medical records (Enclosure 9-9e) indicated that he was diagnosed as having blunt head trauma and a right facial abrasion. He was directed to take Tylenol, an over-the-counter pain medication, as needed and directed not to drive or operate machinery for 24 hours. He was also instructed to apply an ice pack to his face twice a day.

Status of Criminal Case

§ 87(2)(b) failed to appear for the § 87(2)(b) hearing for this arrest (Enclosure 11-11c). As a result, bail was forfeited and a warrant was ordered for his appearance. The warrant is currently active.

Civilian Arrest history

§ 87(2)(b) has no other arrests listed via his NYSID number. However, § 87(2)(b) is a minor and thus, his records cannot be accessed. There is no question that § 87(2)(b) had an outstanding warrant prior to this arrest: § 87(2)(b)

Officer CCRB history

Lt. Gary Messina has three substantiated allegations from CCRB case 9601222: force (push/shove), abuse (property damage), and discourtesy (curse). The Board recommended charges be filed. The charges were dismissed.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) indicated that two White male officers were involved in this incident. He believed that PO2's name was "Cappolla." PO Cappolla admitted involvement in this incident and his account corresponds to § 87(2)(b)'s in the sense that he was not the officer holding the upper portion of § 87(2)(b)'s body. Lt. Messina, who was partnered with PO Cappolla that day, admitted involvement in the incident and fairly matches § 87(2)(b)'s description of PO1: a tall, 250 pound White male with light colored hair; Lt. Messina lists himself as a 5'10" 210-pound White male with light brown hair. As a result, Lt. Messina and PO Cappolla identified as the subject officers.

Facts

Lt. Messina and PO Cappolla stopped § 87(2)(b) after observing him riding his bicycle on the sidewalk in the vicinity of 51-32 Beach Channel Drive in Queens. The officers conducted a warrant check, which found that § 87(2)(b) was wanted on an outstanding family court warrant. The officers proceeded to arrest him when a struggle ensued. The officers and § 87(2)(b) (who only provided a phone statement when the complaint was filed) agreed that § 87(2)(b) attempted to flee the officers as they started to arrest § 87(2)(b). PO Cappolla and § 87(2)(b) sustained abrasions to their faces during the struggle to handcuff § 87(2)(b). EMTs treated § 87(2)(b) at the station house and he was eventually taken to § 87(2)(b). PO Cappolla sought medical treatment at § 87(2)(b) and his line-of-duty status was

approved. § 87(2)(b) failed to appear for his court appearance regarding this arrest and a new warrant was issued for him.

Issues in Dispute

§ 87(2)(b) alleged that one of the officers kicked him while he was on the ground, banged his head several times against the ground and that Lt. Messina grabbed him by his Adam's apple, thereby using a chokehold. The officers denied ever kicking § 87(2)(b) or that Lt. Messina placed § 87(2)(b) in a chokehold during this struggle. Lt. Messina denied striking § 87(2)(b)'s face to the ground, though both the lieutenant and § 87(2)(b) agreed that § 87(2)(b) was attempting to get up from the ground and that Lt. Messina used his body weight to force § 87(2)(b)'s body back to the ground.

The officers alleged that § 87(2)(b) kicked PO Cappolla in the face, causing his injury. § 87(2)(b) denied struggling with the officers, though he admitted that he was attempting to get up from the ground while Lt. Messina was on top of him.

Credibility

§ 87(2)(g)

§ 87(2)(g)

Allegation A. Lt. Gary Messina forcibly stopped § 87(2)(b)

There is no question that Lt. Messina and PO Cappolla stopped § 87(2)(b) upon observing § 87(2)(b) riding his bicycle on the sidewalk, which is a misdemeanor. § 87(2)(g)

§ 87(2)(b) Lt. Messina indicated that he reached out and grabbed § 87(2)(b) while he was on the bike, as § 87(2)(b) had started to ride away. § 87(2)(g)

Allegation B. Lt. Gary Messina used physical force against § 87(2)(b)

Allegation C. PO Thomas Cappolla used physical force against § 87(2)(b)

After stopping § 87(2)(b) and conducting a warrant query that found an outstanding warrant for § 87(2)(b) the officers proceeded to arrest § 87(2)(b). All parties agree that a struggle ensued with § 87(2)(b) and PO Cappolla sustaining minor injuries to their faces in the form of abrasions. § 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Allegation D. Lt. Gary Messina used a chokehold against § 87(2)(b) [Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: